

# Exhibit J

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Helena, MT

December 15, 2006

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THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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In Re: PHARMACEUTICAL ) MDL DOCKET NO.  
INDUSTRY AVERAGE WHOLESALE ) CIVIL ACTION  
PRICE LITIGATION ) 01CV12257-PBS

-----X

THIS DOCUMENT RELATES TO: )

ALL ACTIONS )

-----X

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VIDEOTAPE 30(b)(6) DEPOSITION OF

JEFF BUSKA, VOLUME III

Taken at 33 South Last Chance Gulch

Helena, Montana

Friday, December 15, 2006 - 9:05 a.m.

Reported by Mary R. Sullivan, RPR, RMR, Freelance  
Court Reporter, Notary Public, residing in Missoula,  
Montana.

Henderson Legal Services, Inc.  
(202) 220-4158

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1 document for us?

2 **A. Yes.**

3 Q. What is this document?

4 A. It's a document that was received by the  
5 State Health Policy and Services Division,  
6 September 4, 2001. It's the report on the average  
7 sales price from Bayer.

8 Q. And what date is reflected as the date  
9 of receipt of this document by the Montana--State  
10 of Montana?

11 A. It's the date it was date stamped in as  
12 received by our administrative staff.

13 Q. And I'm sorry, what date is that?

14 A. The date--the date stamp.

15 Q. Yeah, and what date is that, I'm sorry?

16 A. Oh, September 4th, 2001.

17 Q. Does Exhibit Buska 052 reflect the  
18 average sale price information from Bayer  
19 Corporation that was required to be provided under  
20 the settlement agreement between the State of  
21 Montana and Bayer?

22 A. Yes, it has the NDCs and the average

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1 AWP, and then later on, then it has the cover  
2 letters from previous documents that we've  
3 reviewed dated August 30th, 2001 received by the  
4 State of Montana Health Policy and Services  
5 Division September 14th, 2001.

6 Q. Did Exhibit Buska 055, did that come out  
7 of Montana Medicaid files?

8 A. **Yes.**

9 Q. And specifically, did Exhibit Buska 055  
10 come from the Medicaid pharmacy program officer  
11 files that you were referencing earlier?

12 A. **Yes.**

13 Q. The average sale price reports that  
14 Montana received from Bayer did not include  
15 handwriting in the average sale price report  
16 itself; is that right?

17 A. **That's correct.**

18 Q. Are you able to tell us how the  
19 handwriting that appears on Exhibit Buska 055 came  
20 to appear on that document?

21 A. **It would have been handwritten--it is  
22 the handwriting of Shannon Marr who was the**

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1       **pharmacy program officer at that time.**

2           Q.    And so that the record is clear, what  
3    I'm referencing in terms of handwriting initially  
4    is--do you see in the very first page, which is  
5    Montana 076440, I'm looking at a column that is--  
6    has handwriting AWP.  Do you see that?

7       **A.    Yes.**

8           Q.    And then under that column, there's a  
9    series of entries in--in--in handwriting.  Do you  
10   see those?

11       **A.    Yes, to the left of the Average Sales  
12   Price.**

13       Q.    Yes.

14       **A.    Yes.**

15       Q.    So--and to the left of the typed-in  
16   average sale price information.

17       **A.    Yes.**

18       Q.    And so you're able to today testify for  
19   Montana that--whose--whose handwriting is--is  
20   this?

21       **A.    This is Shannon Marr's handwriting.**

22       Q.    And remind me who Shannon Marr was--

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1           A.     Shannon Marr was the pharmacy program  
2     officer at the time.

3 Q. What are the handwritten entries?

4           A.     The handwritten entries, I would imagine  
5     what she did is she went into our claims payment  
6     system and looked up the NDC for every one of  
7     these--these drugs and indicated the--what the  
8     average wholesale price was probably for the  
9     current time period, and when she did this, it's  
10    not dated as to when she did this, these hand--  
11    these entries on here, but would have been the  
12    average sales price--or average wholesale price at  
13    that time that was in our reimbursement system.

14 Q. Well, let's just take a for example.  
15 The--the last entry on the first page, do you see  
16 that? It's the product name is Ciprofloxacin HCL  
17 750 milligrams, 100s, UD?

18 A. Yes.

19 Q. And that--that has under the AWP column-  
20 -the entry is 4.82740; is that right?

21 A. That's correct.

22 Q. And then the typed-in average sale price

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<sup>1</sup> for that same product is 3.42934; is that right?

2 A. NO.

3 Q. Oh, did I say--

4 A. 3.429394.

5 Q. Thank you for the correction. Then--

6 now, the average sale price information comes from  
7 Bayer Corporation; is that right?

8           A.    That's correct.

9           Q.     The AWP information that appears comes  
10           from what source?

11           A.     Comes from a hand entry by the pharmacy  
12           program manager by looking up the reimbursement  
13           rates, the AWP prices that we have in our claims  
14           processing system.

15 Q. And that AWP information is available by  
16 any one of the Medicaid--Montana Medicaid  
17 representatives?

18 A. Yes.

19 Q. They can access that?

20           A. Yes. Individuals that have security  
21           clearance to access the claims file--the claims  
22           payment system can look this up.

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1           **A. No, I'm not aware of any discussion**  
2           **regarding it.**

3           Q. And by discussion, I'm including e-mail  
4           communications or telephone conversations or in-  
5           person meetings. Are you aware of--

6           **A. I'm not aware of anything like that, no.**

7           Q. You mentioned that you're not aware of  
8           any similar comparison documents that compare the  
9           average sale price reported figures to the AWP  
10          figures for those same products. Is it fair to  
11          say, though, that anyone at Montana Medicaid could  
12          have performed the same comparison at any time  
13          during the time that Bayer was reporting the  
14          average sale price information?

15           **A. Yes, somebody could have, but likely,**  
16           **no, because the document, as I indicated earlier,**  
17           **wasn't given to anybody else.**

18           Q. Well, any--any of the pharmacy program  
19          officers could have done such comparisons at any  
20          point in their time; is that right?

21           **A. They could have, yes.**

22           Q. Well, I'm going to be the one to ask for

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1 a break now.

2 MS. BOVINGTON: Okay.

3 MR. DOSS: I should have gone earlier.

4 THE VIDEOGRAPHER: Off the record--I'm  
5 sorry. Off the record at 10:19.

6 (Whereupon, the deposition was in  
7 recess at 10:19 a.m., and subsequently reconvened  
8 at 10:26 a.m., and the following proceedings were  
9 had and entered of record:)

10 THE VIDEOGRAPHER: On the record at  
11 10:26.

12 Q. (By Mr. Doss) Mr. Buska, did--did  
13 Montana receive average sale price information  
14 from any other pharmaceutical manufacturers--

15 A. **Yes.**

16 Q. --other than Bayer?

17 A. **Yes, I believe we did.**

18 Q. And what other manufacturers did Montana  
19 receive average sale price information?

20 A. **I believe I recall seeing stuff from TAP**  
21 **Pharmaceuticals, but I can't recall any others.**

22 Q. Mr. Buska, I'd like to--I've asked to

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1           **A.    That's my--**

2           **Q.    What was--**

3           **A.    --my guess.**

4           **Q.    Yeah. What would your estimate be as to**  
5    **what the program funding levels were back in, say,**  
6    **1998?**

7           **A.    I can't answer that. I don't know.**

8           **Q.    The--the 600- to 700 million dollar**  
9    **figure was your estimate as of this last year?**

10          **A.    As of--yeah, as of our current,**  
11          **probably. That's about the budget request or the**  
12          **budget amount is in that range. I don't know what**  
13          **the exact figure is currently.**

14          **Q.    The response here says that Montana**  
15          **Medicaid was not able to incorporate the Bayer ASP**  
16          **information. That's--that's not technically**  
17          **correct, is it? Isn't it that Montana Medicaid**  
18          **chose not to include the average sale price**  
19          **information into its evaluation of the estimated**  
20          **acquisition cost for the reasons you've already**  
21          **described?**

22          **A.    Yeah, we didn't do any--we did not do an**

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1 analysis of the comparison of the rates to  
2 incorporate that information into our payment  
3 methodology.

4 Q. If Montana's regulations on its  
5 definition of estimated acquisition cost required  
6 that it utilize the Bayer average sale price  
7 information, it would have done what was necessary  
8 to incorporate the Bayer average sale price  
9 information; is that fair to say?

10 A. Fair to say if it was required by the  
11 federal government.

12 Q. Or by the state regulations.

13 A. The State of Montana--

14 Q. Yeah.

15 A. --establishes those regulations.

16 Q. Well, that's--that's my question.

17 A. Yeah.

18 Q. You would follow your regulations if--if  
19 it was required you follow.

20 A. If it was required.

21 Q. Would the circumstances that led Montana  
22 Medicaid not to use the Bayer average sale price